

2. The petitioners are facing prosecution in FIR No.256 of 2006 of Malad Police Station. The said case is under Sections 341, 342, 364-A, 380, 458, 120(B) read with 34 of IPC. The said case pertains to Sessions Case No.674 of 2006 which is pending before the learned Sessions Judge for Greater Bombay at Sewree. In the said case, charge came to be framed by the learned Sessions Judge against the petitioners and other accused

under Sections :-

- (1) 120(B) read with 34 of IPC,
- (2) 458 read with 34 of IPC,
- (3) 452 read with 34 of IPC,
- (4) 364-A read with 34 of IPC,
- (5) 341 read with 34 of IPC,
- (6) 342 read with 34 of IPC,
- (7) 380 read with 34 of IPC, and
- (8) 506 Part-ii read with 34 of IPC.

3. As far as charge Nos.(1) to (3) and (5) to (8) are concerned, the petitioners have no grievance. However, as far as 4th charge under Section 364-A read with 34 of IPC is concerned, the petitioners have a grievance. It is the case of the petitioners that there is no material in the present case to frame charge under Section 364-A and as such the order of the learned Sessions Judge framing charge against the petitioners under Section 364-A be set-aside.

4. In order to appreciate the contentions of the learned Advocate for the petitioners, it would be necessary to reproduce the provisions of

Section 364-A of IPC :

"**364A** Kidnapping for ransom, etc.-- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [any foreign State or international intergovernmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

5. Mr.Mishra, the learned Advocate for the petitioners has submitted that Section 364-A deals with a case of kidnapping or abducting for ransom

and as far as this case is concerned there was no demand for ransom and hence the provisions of Section 364-A would not be attracted in the present case. Mr.Mishra vehemently contended that when there is no demand for ransom, no case can be made out under Section 364-A of IPC. In support of his contention, he has placed reliance on a decision of the Supreme Court in the case of **Malleshi Vs. State of Karnataka** reported in **2004 Cri.L.J. 4645 (Supreme Court)**. Mr.Mishra placed reliance on the observations in paragraph-12 of the said decision, which read as under:-

"12. To attract the provisions of Section 364-A what is required to be proved is (1) that the accused kidnapped or abducted the person; and (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom. Strong reliance was placed on a decision of the Delhi High Court in **Netra Pal Vs. State (NCT of Delhi)** (2001 Cri.LJ 1669) to contend that since the ransom demand was not conveyed to the father of PW.2, the intention to demand was not fulfilled."

6. I have perused the statement of the complainant Mr.Babulal Kothari as well as that of

Mr.Jayantilal Dave who was abducted. Mr.Jayantilal Dave along with one Yasim Patel was residing in the flat of the complainant Babulal Kothari at the relevant time. The complainant was not residing at the said flat. However, he used to come of and on to the said flat. When the incident occurred, the complainant was not present in the flat. Mr.Jayantilal Dave has stated that on 24.2.2006 he returned to the said flat at about 11:00 p.m.. When he entered the flat, suddenly four persons came from behind him and forced their way into the flat. Two of the said persons caught hold of Jayantilal Dave and pushed him into the bedroom. They threatened Jayantilal and asked him how he was concerned with the said flat and who else was residing in the said flat. Jayantilal replied that he has no concern with the said flat and he was residing there with his employer Yasin Patel. Thereafter, those persons locked him in the bed room till 5:00 a.m.. While he was in the bed room one of those persons told the other person to keep a watch on Jayantilal and see that he does not raise any shouts or make any noise. Jayantilal was threatened that if he raises any noise, he would suffer injuries. At about 5:00

a.m. two of the persons caught hold of Jayantilal and took him down. They forcibly made him sit in a rickshaw. Thereafter rickshaw was taken to Borivali National Park. There they stopped at a secluded place and Jayantilal was told that he should not step into the flat and if he did so he would be murdered. After threatening, they left Jayantilal on the highway.

7. It is true that no demand for any ransom has been made by any of the accused persons to Jayantilal or the complainant. However, if one peruses the provisions of Section 364-A, it is seen that the section would be attracted even if no demand for ransom is made. The ingredients necessary to attract Section 364-A are that there should be kidnapping or abducting of a person, threat to cause death or hurt to such person, or apprehension of death or hurt to such person, the threat should be to compel the person to do any act or to abstain from doing any act or to pay a ransom. Thus, it is seen that the kidnapping or abduction need not be only with an intention that some ransom should be paid, but, the kidnapping or abduction can be with an intention to make any person do any

particular act or abstain from doing any act. The said person need not be the person kidnapped or abducted, but, it could be any other person. As far as the present case is concerned, it is clear that Jayantilal was abducted and threatened with death if he tried to enter the flat. Thus Jayantilal was threatened with death so that he would abstain from entering the flat. Thus, Section 364-A is clearly attracted. However, it is seen that as far as the charge under Section 364-A is concerned, the same has been framed by the learned Sessions Judge as under :-

"FOURTHLY : That on the same date, time and place, you accused, above named along with wanted accused No.8 & 9, above named, in furtherance of your common intention, kidnapped Shri Jayantilal Dave and threatened to cause him hurt to pay ransom from the original owner above named and thereby committed an offence punishable under Section 364-A r/w. 34 I.P.C. and within my cognizance."

. Since there is no demand for ransom, strictly speaking the charge has not been correctly worded. No doubt Section 364-A is attracted, but, not in respect of demand for

ransom but in order to make the abducted person and the owner of the flat do a particular act or to abstain from doing a particular act.

8. As far as decision in the case of **Malleshi** (supra) on which reliance was placed by Mr.Mishra is concerned, it is seen that the observations in paragraph-12 have been made in respect of the fact situation in the said case. Therein, the abducted person was asked to sit in a jeep and then he was threatened that he would be murdered and then they enquired with the abducted person about the phone number stating that they will ask his father to pay Rs.4 lakhs to them for his release. The issue in the said case was that the demand for ransom was not made to the person abducted, but, it was made to his father and, therefore, whether Section 364-A would be attracted ?. It was in this context that the observations were made in paragraph-12 of the said decision i.e.**Malleshi**(supra) and thereafter in paragraph-15 it is observed as under :-

"15. ... The object of abduction was for ransom. This was clearly conveyed to the

victim PW-2. He was even conveyed the amount to be paid. It cannot be laid down as a strait-jacket formula that the demand for payment has to be made to a person who ultimately pays."

9. The issue in the present case did not arise for consideration before the Supreme Court. As stated earlier the observations in paragraph-12 are made in the factual matrix of the case before the Supreme Court, hence in this view of the matter the said decision would be of no help to the petitioners.

10. Thus, in the facts of the present case, I am of the opinion that Section 364-A read with 34 is attracted in the facts of the present case. However, the words "to pay ransom from the original owner above named" which is reflected in the said charge would not be appropriate. Hence, though the charge under Section 364-A would be retained, the learned Sessions Judge to make appropriate changes in the wording of the said charge.

11. Revision Application is disposed of with the above observations.

..(10)..

(SMT.V.K.TAHILRAMANI, J.)